Supreme Court Rules of Professional Practice
Chapter 24. IOLTA.

(a) A lawyer or law firm shall create and maintain an interest-bearing trust account for clients' funds (hereinafter referred to as an "IOLTA account"). All client funds shall be placed into this account except those funds which can earn net income (income in excess of costs associated with the account) for the client or except as provided in paragraph (i) of this rule. All interest and dividends from the IOLTA account shall be remitted to the Utah Bar Foundation ("Foundation") as provided herein.

(b) In determining whether a client's funds can earn net income, the lawyer or law firm shall consider the following factors:

(b)(1) the amount of the funds to be deposited;

(b)(2) the expected duration of the deposit;

(b)(3) the rates of interest or yield at financial institutions where the funds are to be deposited;

(b)(4) the costs of establishing and administering non-IOLTA accounts for the client's benefit, including service charges, and the costs of preparing any tax reports required for income accruing to the client's benefit; and any other circumstances that may affect the ability of the client's funds to earn net income.

(c) The lawyer or law firm shall review its IOLTA account at reasonable intervals, but not less than annually, to determine whether changed circumstances require further action with respect to the funds of a particular client.

(d) The lawyer or law firm shall:

(d)(1) not allow earnings from an IOLTA account to be made available to a lawyer or law firm;

(d)(2) place in the IOLTA account all clients' funds which cannot earn net income for the client;

(d)(3) establish an IOLTA account with any financial institution (i) authorized by federal or state law to do business in Utah, (ii) insured by the Federal Deposit Insurance Corporation or its equivalent, and (iii) that complies with Rule 1.15 (a) of the Utah Rules of Professional Conduct; and

(d)(4) direct the depository institution where the IOLTA account is established:

(d)(4)(A) to remit all interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, solely to the Foundation. When feasible, the depository institution shall remit the interest or dividends on all of its IOLTA accounts in a lump sum, however, the depository institution must provide, for each individual IOLTA account, the information to the Foundation required by subparagraphs (d)(4)(B) and (d)(4)(C) of this rule;

(d)(4)(B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, account number for each account, the rate and type of interest applied, the amount and type of service charges deducted, the average account balance for the reporting period and such other information as is reasonably required by the Foundation;

(d)(4)(C) to transmit to the depositing lawyer or law firm a periodic account statement for their IOLTA account reflecting the amount of interest paid to the Foundation, the rate of interest applied, the average account balance for the period for

which the interest was earned, and such other information as is reasonably required by the Foundation;

(d)(4)(D) that fees or charges in excess of the interest earned on the account for any period shall be waived and shall not be taken from interest earned on other IOLTA accounts or any principal balance of the accounts; and

(d)(4)(E) comply with all other administrative rules as promulgated by the Foundation or the Utah Supreme Court.

(e) Participating financial institutions shall maintain IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

(f) Any IOLTA account which has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of any time, may at the discretion of the Foundation, be exempted from and removed from the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use the Foundation's tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the property of client funds separately, as required above, in a non-interest bearing account and also will not relieve the lawyer of the annual IOLTA certification.

(g) In the event a lawyer determines that funds placed in an IOLTA account should have been placed in an interest bearing account for the benefit of the client, the lawyer or law firm shall:

(g)(1) make a request for a refund in writing, in a timely manner, to the Foundation on firm letterhead within a reasonable period of time after the interest was remitted to the Foundation; and

(g)(2) provide verification from the financial institution of the interest amount. In no event will the Foundation refund more than the amount of net interest it received; remittance shall be made to the financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.

(h) On or before September 1 of each year, any lawyer admitted to practice in this State shall certify to the Foundation, in such form as the Foundation shall provide ("IOLTA Certification Form"), the manner in which the lawyer accounts for the interest on clients' trust accounts. The IOLTA Certification Form shall include the financial institution, account numbers, name of accounts and such other information as the Foundation shall require. Each lawyer shall keep and maintain records supporting the information submitted in the IOLTA Certification Form. The lawyer shall maintain these records for a period of five years from the end of the period for which the IOLTA Certification Form is filed, and these records shall be submitted to the Foundation upon written request. Failure by the lawyer to produce such records within thirty days after

written request by the Foundation constitutes a rebuttable presumption that the lawyer has not complied with these rules.

(i) A lawyer may be exempt from having to maintain an IOLTA account for the following reasons:

(i)(1) the lawyer or law firm's client trust account has been exempted and removed from the IOLTA program by the Foundation pursuant to paragraph (f) of this rule; or

(i)(2) the lawyer has certified in his or her most recent annual IOLTA Certification Form that the lawyer:

(i)(2)(A) is not engaged in the private practice of law or does not manage or handle client trust funds and does not have a client trust account (e.g. corporate counsel, judge, employed by local, state or federal government who does not handle client trust funds or in private practice but does not handle client monies and has no client trust account);

(i)(2)(B) does not have an office within the State of Utah and has the client's permission to hold the funds out of state; or

(i)(2)(C) has been exempted by an order of general or special application of this Court which is cited in the certification;

(i)(3) the lawyer or law firm petitions for and receives a written exemption from the Foundation that compliance with this rule would create an undue hardship on the lawyer and would be extremely impractical, based on geographic distance between the lawyer's principal office and the closest depository institution which is participating in the IOLTA program.

(j) The Utah Bar Foundation is the only entity authorized to receive and administer IOLTA funds in the State of Utah.

(j)(1) The Foundation shall have general supervisory authority over the administration of the IOLTA funds, subject to the continuing jurisdiction of the Utah Supreme Court.

(j)(2) The Foundation shall receive the net earnings from all IOLTA accounts and shall make appropriate investments of IOLTA funds. The Foundation shall maintain proper records of all IOLTA receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant. The Foundation shall annually present to the Utah Supreme Court a reviewed or audited financial statement of the IOLTA receipts and expenditures for the prior year and a summary thereof shall be made available to anyone requesting copies.

(j)(3) The Foundation shall be responsible to present annually to the Utah Supreme Court a status report on activities of the Foundation and compliance with these rules.

(j)(4) The Foundation shall be responsible to make disbursements from the IOLTA program funds, including current and accumulated net earnings, by grants, appropriations and other appropriate measures, as outlined in the articles and by-laws for the organization.

(j)(5) The Foundation shall promulgate such other rules, procedures, reports and forms that are necessary or advisable for the proper implementation of the foregoing rules.

(k) All lawyers who maintain accounts provided for in this rule must convert their client trust account(s) to interest-bearing account(s) with the interest paid to the Utah Bar Foundation no later than six months from the date of order adopting this rule, unless

the lawyer has been granted exemption from this Court as allowed in Sections (f) or (i) of this rule. Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule.